

IT 96-5
Tax Type: **INCOME TAX**
Issue: **Federal Change (Individual)**

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)**

	v.)	No.
TAXPAYER)	
	Taxpayer(s))	Hollis D. Worm Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Synopsis:

This matter is before this administrative tribunal as the result of a timely Request for Hearing by TAXPAYER, (hereinafter referred to as the "taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to him on September 12, 1995. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer had failed to file an Illinois Income Tax return for the taxable years ending December 31, 1980 through December 31, 1988. The Notice asserted an increased tax liability, as well as penalties pursuant to 35 **ILCS** 5/1001, 5/1005 and 5/804 for failure to file, failure to pay the entire tax liability by the due date, and failure to pay estimated tax, respectively.

In the taxpayer's Protest he contends that he was not a resident of Illinois for all of the years at issue. The hearing in this matter was held on January 12, 1996. The issues to be resolved are:

(1). Whether the taxpayer was a resident of Illinois and failed to file an Illinois income tax return for the 1980 through 1988 taxable years?

(2). Whether penalties should be assessed pursuant to 35 **ILCS** 5/1001, 5/1005 and 5/804?

Following the submission of all evidence and a review of the record, it is recommended that the amounts of tax and penalties in the Notice be upheld for the 1980 through 1984 taxable years, as well as the 1988 taxable year.

Findings of Fact:

1. For the 1980 through 1984 taxable years, and the 1988 taxable year, the taxpayer was an Illinois resident, earned income in the State of Illinois, and failed to file an Illinois income tax return.

2. The Department of Revenue issued a Notice of Deficiency for the 1980 through 1988 taxable years. Dept. Ex. No. 1

3. The taxpayer filed a timely Protest. Dept. Ex. No. 2

4. The taxpayer was a resident of Florida for the 1985 through 1987 taxable years. Taxpayer Ex. No. 1

Conclusions of Law:

All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a) The taxpayer, as an Illinois resident who earned income in this state during the 1980 through 1984 taxable years, as well as the 1988 taxable year, was accordingly subject to Illinois income tax and was required to timely pay and file a return under the Illinois Income Tax Act. (35 ILCS 5/101 *et seq.*)

The Notice of Deficiency is *prima facie* correct so long as its proposed adjustments meet some minimum standard of reasonableness. Vitale v. Illinois Department of Revenue, 118 Ill.App.2d 210 (3rd Dist. 1983). In order to overcome this *prima facie* correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. Masini v. Department of Revenue, 60 Ill.App.3d 11 (1st Dist. 1978). The taxpayer has met that burden in this case with respect to the 1985 through 1987 taxable years by introducing into evidence copies of his W-2 forms issued by employers in the State of Florida.

In addition to asserting a tax deficiency, the Notice proposes penalties pursuant to 35 ILCS 5/1001 and 5/1005 for failure to file a tax return and for failure to pay the entire tax liability by the due date, respectively. Penalties imposed under the provisions of these statutory sections, however, shall not apply if failure to file or pay the tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.

The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis (Rorabaugh v. United States, 611 F.2d 211 (7th Cir.,1979)) and has generally been interpreted to mean the exercise of ordinary business care and prudence (Dumont Ventilation Company v.Department of Revenue, 99 Ill.App.3d 263 (3rd Dist. 1981)). The burden of proof is upon a taxpayer to show by a preponderance of evidence that it acted in good faith and exercised ordinary business care and prudence in providing for the timely payment of its tax liability.

The taxpayer presented no evidence to support a finding that his failure to file a tax return or to pay tax in a timely fashion for the 1980 through 1984 taxable years, as well as the 1988 taxable year was not due to negligence or that it was due to reasonable cause. He therefore failed to meet her burden of proof with respect to the aforementioned penalties.

35 **ILCS** 5/804 imposes a penalty for underpayment of estimated tax unless the taxpayer was not required to file an Illinois income tax return, or by reason of casualty, disaster, or other unusual circumstances the imposition of such penalty would be against equity and good conscience. 35 **ILCS** 5/804(e) and (f) The taxpayer was a resident of Illinois during the 1980 through 1984 taxable years, as well as the 1988 taxable year, and therefore he was required to file an Illinois income tax return. Furthermore, the taxpayer presented no evidence to support a finding that his failure to file was due to casualty, disaster, or other unusual circumstances. Therefore this penalty should be assessed.

It is my recommendation that the amounts of tax liability and penalties for the 1980 through 1984 taxable years, as well as the the 1988 taxable year, as proposed in the Notice of Deficiency stand, and the amounts of tax liability and penalties proposed for the 1985 through 1987 taxable years be withdrawn.

January 19, 1996

Hollis D. Worm
Administrative Law Judge